E and P.H. (1958) Department.

Ms SERIES.

Letter

G.O. No. 1766 P. 17

11

Dated 27 5 58

[Despatch Abstract.]

Act – Epidemic diseases Act 1897 – Amend-

ment of sec. 3 Suggestion of the Govt of India

Replied to

From
F.W.A.Morris Esq. I.C.S.,
Collector and Dist.Magistrate,
Coimbatore.

The Secretary to the Government,
Education and Public
Health Department, Madras,
Dated 2-4-47.

REF. 746/47 M-D3

PLAGUE - Regulations - Violation of - Institution of proceedings u/s 188 I.P.C. Amendment to existing orders - suggested.

- - - -

In exercise of the powers conferred by section 2 of the Epidemic Diseases Act 1897, Government have notified certain plague regulations in their order No1 2133 Public Health dated 17-7-46 and under Section 3 of the Act, a violation of any regulation or order made under the Act, is punishable under section 188 I.P.C.

2. According to the requirements of Section 195 (1) (a) Criminal Procedure Code however, a Court cannot take cognizance of an offence u/s 188 I.P.C. unless the complaint in writing is from the Public Servant concerned or of some other Public servants to whom he is Subordinate. In all cases therefore in which the plague regulations attract the provisions of Section 188 I.P.C. only the public servant concerned or his superior in office can give a valid complaint. To quote one instance in the case of a violation of an order made by the Collector under Regulation 8, the Collector alone or his superior in office can give a complaint for an offence u/s 188 I.P.C. The work of either the issue of the order or the right to prefer a complaint cannot under law be delegated t to a subordinate, eg. the District Health Officer, The Municipal Health officer, or the Revenue Divisional Officer. In districts like Coimbatore, where the Collector has ordinarily other abundant work to do it would be difficult if the collector himself were to file complaints in cases of violation of the Plague Regulations which on certain occasions will be of constant occurance. In order to obviate this difficulty, I suggest that the powers of the Legislature may be involved to that in all regulations or orders ~~xxxxx~~ attracting the provisions f of section 188 I.P.C the infringment may per se be made an offence as provided in the various orders made under the Defence of India Act and Defence of India Rules.

sd. F.W.A. Morris

District Magistrate.

/True Copy/

FOR DISTRICT MAGISTRATE.

GK.22.5.

Education and Public Health Department.

E/2/

Endorsement No. 26848-1-E (2)/47. P.H. dated 10-4-47

Referred to the Director of Public Health for remarks.

sd.

Assistant Secretary to Government.

To

The Director of
Public - Health.

R.No. 23036-1/Epi. Office of the Director of Public Healt
Madras, dated 23rd April 1947.

Retransmitted.

I agree with the suggestion of the Collector made in his letter Ref.746/47 M-D3, dated 2-4-47

sd.

for Director of Public Health, Madras.

To

The Secretary to Government,
Education & Public Health Department,
Fort St. George, Madras.

GK-22.5.

GOVERNMENT OF MADRAS.
EDUCATION AND PUBLIC HEALTH DEPARTMENT.
No. 26848-7 E (2)/47 P.H.
**

From

C.O. Coorey, Esq., M.B.E., I.C.S.,
Joint ~~Secretary~~ Secretary to the Government of Madras.

To

The Secretary to the Government of India,
Ministry of Health,
NEW DELHI.

Dated Fort St. George the 14th October 1947.
***

Sir,

Epidemic Diseases Act, 1897-Amendment of Section 3.
***

I am directed to address the Government of India on a matter relating to the amendment of section 3 of the Epidemic Diseases Act, 1897.

2. Under Section 2 of the Act, this Government have issued certain regulations for the prevention of the outbreak or the spread of plague outside the city of Madras . Under section 3 of the Act, any person disobeying any regulations or order made under the act shall be deemed to have committed an offence punishable under section 188 of the Indian penal Code. Under section 195 of the Indian Penal Code, no court shall take cognizance of an offence punishable under section 188 of the Indian Penal Code except on the complaint in writing of the public servant concerned or of any other public servant to whom he is subordinate. In view of the difficulty involved in the Collector of a district having to file written complaints especially on occasions when plague breaks out in an epidemic form (which is not of rare occurrence) it has been suggested that the Act may be amended so as to enable the court to take cognizance of a contravention of any regulation or order made under the Act without making it obligatory on the Collector to prefer a written complaint to the court under section 195 of the Indian Penal Code. This suggestion, it is stated, can be given effect to by specifying in the section itself the punishment for the disobedience of any regulation or order.

3. Regulations or orders under the Act are made by the Provincial Government under section 2 and by the Central Government under section 2-A. The subject matter relating to section 2 falls within the seope of Entries 14 and 37 of the Provincial Legislative List, Viz., "Public Health and sanitation" and"Offences against laws with respect to any of the matters in this (Provincial Legislative) List" and of Entries 2 and 30 of the cencurrent Legislative List, Viz., "Criminal Procedure" and "The prevention of the extension from one unit to another of infections or contagious diseases or pests affecting men, animales or plants." Any amendment to the Act made for this purpose by the Provincial Legislature can therefore take effect only with

respect.

GOVERNMENT OF MADRAS.
EDUCATION AND PUBLIC HEALTH DEPARTMENT.
No. 26848-7 E (2)/47 P.H.
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C.O. Coorey, Esq., M.B.E., I.C.S.,
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respect.

respect to regulations or orders made under section 2 and not with reference to those made under section 2-A as they fall under Entry 18 of the Federal Legislative List (Port Quarantine) Legislation with respect to section 2 A can be undertaken only by the Central Legislature.

4. Consultation with the Government of India is ordinarily unnecessary for an amendment of section 3 in relation to the cases dealt with in section 2 as the inroad into the Concurrent Legislative field will be merely incidental. However, this Government consider that it will be awkward to amend section 3 in relation to the cases dealt with in section 2 alone in the contemplated, unless the Government of India also amend section 3 in the same manner in relation to cases dealt with in section 2-A I am directed to enquire whether the Government of India will be willing to make such an amendment. An early reply is requested.

Yours obedient servant,

For Joint Secretary to Government.

GK.22.5. /True Copy/

EDUCATION AND PUBLIC HEALTH E (2).

Letter No. 26848-8-E (2)/47 P.H.dated 18-11-47

To

The Secretary to Government of India,
Ministry of Health,
New Delhi.

Sir,

Sub: Epidemic Diseases Act, 1897 - Amendment of section 3.

Ref: My letter No. 26848-7-E(2)/47 P.H. d/14-10-47.

- - -

I am directed to invite attention to my letter cited above and to request you to state when a reply may be expected.

Your obedient Servant,

/True Copy/

GK.22.5.

No. F.30-91/47-PH.II
Government of India.
Ministry of Health.

New Delhi, the 26th November, 1947.

P.S. Doraswami, Esquire,
Assistant Secretary to the Government of India,

The Secretary to the Government of Madras,
Education & Public Health Department,
Fort St. George,
Madras.

Subject:- Epidemic Diseases Act, 1897
Amendment of Section 3.

Sir,

I am directed to acknowledge receipt of your letter No. 26848-7 E(2)/47 P.H., dated the 14th October, 1947 on the subject mentioned above and to say that the matter is under the consideration of the Government of India and a further communication will be made to you as soon as possible.

I have the honour to be,
Sir,
Your most obedient servant,

sd.

(P.S. Doraswami)
Assistant Secreatry.

/True copy/

GK.22.5.

EDUCATION & PUBLIC HEALTH E(20.

Letter Ref: 26848-9-E2/47 P.H. dated 15-1-48.

To

The Assistant Secretary to Government of India,
Ministry of Health,
New Delhi.

Sub: Epidemic Diseases Act, 1897 - Amendment of section 3.
Ref: Your letter No. F.30-91/47 P.H.II d/the 25th November'47.

I am directed to invite attentions to your letter cited above and to enquire when a reply may be expected.

Your obedient servant,

/True Copy/

GK.22.5.

N.F.30-91/47-P.H.II.
Government of India.
Ministry of Health.

New Delhi, the 23 January, 1948.

From

P.S.Doraswami, Esquire, B.A.,
Assistant secretary to the Government of India,

To

The Secretary to the Government of Madras,
Education and Public Health Department,
Fort St. George,
M A D R A S

Sub: Epidemic Diseases Act, 1897 -
Amendment of Section 3.

In continuation of this Ministry's letter on the subject mentioned above dated the 26th November, 1947, I am directed to say that the Government of India presume that the object in view of the Provincial Government's proposal is to exclude the application of Section 195 (I)(a) of the Code of Criminal Procedure, 1898, in relation to an offence under section 3 of the Epidemic Diseases Act, 1897. It would appear that this object can be carried into effect by a simple central amending Act inserting in section 3 of the Epidemic Diseases Act, 1897, a proviso somewhat on the following lines:-

"Provided that no prosecution in respect of such disobedience shall be instituted except by a complaint in writing made by a Gazetted Officer authorised in that behalf by the Provincial Government by notification in the official Gazette."

Such an Act, being concerned only with a matter of detail of"Criminal Procedure" (entry 2 of the concurrent list) would obviate the necessity of further legislation by the Provinces, and the Proviso would, by necessary implication exclude the application of section 195 (I) (a) of the Code.

2. The Proviso, by requireing the institution of prosecution by the authorised gazetted officer, seeks to continue in a substantial measure, the protection against possible harrasment by irrespensible persons which section 195 affords now to the public.

I am to enquire whether the above proviso will meet the requirements of the Government of Madras.

I have the honour to be,
Sir,
Your most obedient servant,
sd. . . .
Assistant Secretary.

GK.22.5.

E
Ind. & P.H. E2.

Letter No. 1766 P.H. dated 27-5-48.

To

The Secretary to the Government of India,
Ministry of Health,
New Delhi.

Sir,

Sub: Act - Epidemic Diseases Act, 1897 - Amendment of Section 3 - Suggestion of the Government of India - Replied to.

- - - -

Ref: From the Government of India, Ministry of Health. D.O.F No. F.30-91/47 P.H. II dated 23-1-48.

- - - - -

I am directed to state that this Government agree with the Government of India that the object in view can be achieved by amending section 3 of the Epidemic Diseases Act, 1897 on the lines suggested in their letter read above. This government are however advised that the form of the amendment as suggested leaves the inapplicability of section 195 (1) (a) of the Code of Criminal Procedure to the case, to be inferred as a matter of necessary implication, that it would be much better specifically and in terms to make section 195 inaplicable and so remove all room for argument on the point. They would therefore like to suggest that instead of adding a proviso to section 3 of the Epidemic Diseases Act, as suggested by the Government of India, that section may be renumbered as sub-section(1) of section 3, the following being added as sub-section (2).

"(2) (a) No Court shall take cognizance of any offence punishable by virtue of sub-section (1) except on a complaint in writing made by a Gazetted officer authorised in that behalf by the Provincial Government by notification in the Official Gazette.

(b) Section 195 of the Code of Criminal Procedure, 1898, shall not apply in respect of any offence punishable as aforesaid."

/True Copy/

GK.25.5.

No. F.30-91/47-PH II.
Government of India.
Ministry of Health.

New delhi, the-10th July, 1948.

From

P.S.Doraswami, Esquire, B.A.,
Assistant Secretary to the Government of India,

To

The Secretary to the Government of Madras,
Education and Public Health Department,
Madras.

Subject:- Epidemic Deseases Act, 1897 - Amendment of Section 3.

Sir,

With reference to the correspondence resting with your letter No.MS.1766 PH, dated the 27th May, 1948, I am directed to say that the draft provise to section 3 of the Epidemic Diseases Act, 1897, communicated to you with this Ministry's letter of even number, dated 23rd January, 1947 would, as a matter of legal interpretation, exclude application of section 195 of the Code of Criminal Procedure 1898. But if it is considered desirable to leave no possible room for doubt in the matter, the draft proviso can be suitably amended by adding after the words "Provided that" the words" notwithstanding anything contained in section 195 of the Code of Criminal Procedure Code, 1898."

2. I am to enquire whether the draft proviso as amended above will meet the requirements of the Government of Madras.

Yours faithfully,

sd.

Assistant Secretary.

/True Copy/

GK.25.5.

Edn & P.H. (E2) Dept.

Letter /Ref.No.52405 E2/48-2 P.H. dated 10-9-48.

To

The Secretary to the Governmemt of India,
Ministry of Health,
New Delhi.

Sir,

Sub:- Epidemic diseases Act 1897 - Amendment of Sec 9=

REF:- From the Govt. of India, Minstry of Health
No.F.30-91/47-PH II dated 10-7-48.

I am directed to state that this Government are advised that it is extremely doubtful if the mere addition of the words "notwithstanding anything contained in section 195 of the Code of Criminal Procedure 1898" to the proviso suggested by the Government of India, in their letter No F.30-91/47-PH-II dated 23rd January 1948, will have the effect of totally excluding the application of section 195 of the Code, and that the safer course will be to exclude in terms the application of section 195 of the Code. In the circumstances, this Government would prefer to adhere to the suggestions communicated to the Government of India in their letter No.MS;1766 P.H. dated 27th May 1948.

Yours faithfully,

sd.

/True Copy/

GK.25.5.

for Superintendent,
Madras Record Office.

27-5-49